

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 9, 2005

D045902 People v. Cummings

Upon filing a written abandonment of appeal, the appeal is dismissed.

D045365 In re Mario H., a Juvenile

The order denying Georgeanna's section 388 petition and the judgment granting guardianship to Mario's caregivers are affirmed. Nares, Acting P.J.; We Concur: Haller, J., McDonald, J.

D045738 Larry A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

D043975 Sparber Ferguson APLC v. Baccash et al.

The judgment is affirmed. Respondent to recover its costs on appeal. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D045861 In re April H., a Juvenile

The appeals are dismissed. Benke, J.; We Concur: McConnell, P.J., Aaron, J.

D046063 Council of Community Clinics et al. v. Workers' Compensation Appeals Board and Remedy Temp et al.

Let a writ of review issue ordering the Workers' Compensation Appeals Board (the Board) to certify and return to this court any materials which were before the Board in making its decision in the matter of Kelly K. Cass v. Remedy Temp et al. SDO0251994, SDO0251995, which are not contained in the petition for review currently before this court. These materials should be received by this court on or before June 13, 2005. Leave is granted to the Board to appear in these proceedings and to file a response by no later than July 5, 2005. The documents currently on file shall constitute a return to the writ subject to any party filing a supplemental written return on or before July 19, 2005. Unless the parties object by July 26, 2005, oral argument will be deemed waived.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and James McIntyre

Clerk: D. Moore

D044723 Ruiz v. Weissker, Inc.

Cause called on merits. Irwin M. Zalkin, Esq. argued for appellant. Eugene P. Kenny, Esq. argued for respondent. Mr. Zalkin replied. Cause submitted.

D044028 County of San Diego v. Shea

Cause called on merits. Steven Berkowitz, Esq. argued for appellant. Steven F. Wingfield, Esq. argued for respondent. Mr. Berkowitz replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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May 9, 2005 (Continued)

Court recessed at 9:55 a.m. until 10 a.m.

Court reconvened at 10 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Judith Haller
Clerk: D. Moore

D045844 Gregory S. et al. v. Superior Court

Matter called on merits. Christopher R. Booth, Esq. argued for petitioner. Kate Bird, Deputy County Counsel argued for respondent. Mr. Booth replied. Matter submitted.

D042426 U. S. Ecology, Inc. v. State of California et al.

Cause called on merits. Stephen C. Neal, Esq. argued for appellant. Donald Cole, Deputy Attorney General argued for respondent. Mr. Neal replied. Cause submitted.

Court recessed at 10:55 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices
Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D044897 Conley v. Regents of the University of California

Cause called on merits. Gideon E. Sinasohn, Esq. argued for appellant. Michael S. Kalt, Esq. argued for respondent. Mr. Sinasohn replied. Cause submitted.

D043825 Zampetti et al. v. Taylor et al.

Cause called on merits. David A. Kay, Esq. argued for appellant. J. Jason Hill, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

D044741 Zampetti et al. v. Taylor et al.

Cause called on merits. David A. Kay, Esq. argued for appellant. J. Jason Hill, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 2:32 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D045008 Barken v. CBIZ Special Risk Insurance Services Inc., et al.

Cause called on merits. Norman Barken, argued for appellant, in pro per. Jack I. Samet, Esq. argued for respondent. Mr. Barken replied. Cause submitted.

Court recessed at 3:24 p.m. until Tuesday, May 10, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 10, 2005

D044719 In re Robert P. et al., Juveniles

D045627 Robert P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

(Consolidated) The request for publication of the opinion is denied.

D045447 In re Marilee L. et al., Juveniles

The judgment is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

D044762 People v. Jones

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D044031 People v. Clutter

The judgment is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D046361 Millard v. Superior Court of Orange/People

The petition is denied.

D044101 People v. Viel

The petition for rehearing is denied.

D045827 In re Viel on Habeas Corpus

The petition for rehearing is denied.

D045879 Leandra G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Huffman, Acting P.J.; We Concur: Nares, J., Haller, J.

D044319 People v. Nero

The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., Haller, J.

D044940 People v. Maltese

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Aaron, J.

D045844 Gregory S. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petitions are denied. Haller, J.; We Concur: McConnell, P.J., Nares, J.

D044427 People v. Rosenow

The judgment is modified by striking the conviction of grand theft (Pen. Code section 487, subd (a)). As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections. Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 10, 2005 (Continued)

D044973 In re Joshua G. et al Juveniles

The judgments are affirmed. Certified for Partial Publication. Huffman, J.; We Concur: Benke, Acting P.J., Haller, J.

D043571 People v. Tanner

The judgment is reversed and the cause is remanded to the trial court for further proceedings consistent with this opinion. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

D045291 In re Jenna R., a Juvenile

The order is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D046296 Pina v. Superior Court of San Diego County/People

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

Clerk: D. Moore

D044362 Milhous et al. v. Franchise Tax Board

Cause called on merits. Leslie Branman-Smith, Deputy Attorney General argued for appellant. Paul Douglas Draper, Esq. argued for respondent. Ms. Smith replied. Cause submitted.

D043058 Milhous et al. v. Franchise Tax Board

Cause called on merits. . Leslie Branman-Smith, Deputy Attorney General argued for appellant. Paul Douglas Draper, Esq. argued for respondent. Ms. Smith replied. Cause submitted.

D044211 Forensis Group Inc., et al. v. Frantz, Townsend & Foldenauer et al.

Cause called on merits. Clark R. Hudson, Esq. argued for appellant, Robbins. Mark Kane, Esq. argued for appellant, Forensis Group, Inc. Roger P. Bingham, Esq. argued for respondent, Frantz, Townsend. Mr. Hudson replied. Mr. Kane replied. Cause submitted.

Court recessed at 10:09 a.m. until 11 a.m.

Court reconvened at 11 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D045374 Chapman et al. v. Superior Court/Malcolm-RPI

Matter called on merits. Earl Pott, Esq. argued for petitioner. Chuck Sevilla, Esq. argued for real party in interest, Malcolm. Dan L. Stanford, Esq. was present in oral argument, but did not argue. Mr. Pott replied. Matter submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
May 10, 2005 (Continued)

D045194 In re Owens on Habeas Corpus

Matter called on merits. Athena Shudde, Esq. argued for petitioner. James D. Dutton, Deputy Attorney General argued for respondent. Ms. Shudde replied. Matter to be submitted at a later date.

Court recessed at 12:27 p.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald
Clerk: D. Moore

D044615 Valencia v. Suros et al.

Cause called on merits. Denise H. Greer, Esq. argued for appellant. Cynthia R. Chihak, Esq. argued for respondent. Ms. Greer replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D044037 People v. Gonzalez

Cause called on merits. David M. McKinney, Esq. argued for appellant. Janelle Boustany, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 2:29 p.m. until 3 p.m.

Court reconvened at 3 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D043940 People v. LO

Cause called on merits. Janice R. Mazur, Esq. argued for appellant. Lilia Garcia, Deputy Attorney General argued for respondent. Ms. Mazur replied. Cause submitted.

Court recessed at 3:30 p.m. to change panel members: New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D042704 People v. Kennell et al.

Cause called on merits. Patricia J. Ulibarri, Esq. argued for appellant, Kennell. Marianne Harguindeguy, Esq. argued for appellant, Grlicky. Lilia Garcia and Lynne McGinnis, Deputy Attorney General argued for respondent. Ms. Harguindeguy replied. Cause submitted.

Court recessed at 3:56 p.m. until Wednesday, May 11, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 11, 2005

D044339 People v. Milanes

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., McIntyre, J.

D044873 In re Dylan H. et al., Juveniles

D044959 In re Rhiannon B., a Juvenile

(Consolidated) The juvenile court's orders are affirmed. McIntyre, Acting P.J.; We Concur: Aaron, J., Irion, J.

D040473 Gober et al. v. Ralphs Grocery Company

It is ordered that the opinion filed April 19, 2005, is modified. There is no change in judgment. The petition for rehearing is denied.

D045828 Blanca V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D046230 Goldberg v. Superior Court of San Diego County/Baker & McKenzie et al.

The petition is denied.

D046282 Mahoney v. Superior Court of San Diego County/People

The petition is denied.

D045792 Larkins v. Schulman

Upon filing a written abandonment, the appeal is dismissed.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron
Clerk: D. Moore

D045140 Willis v. County of San Diego

Cause called on merits. Laurence F. Haines, Esq. argued for appellant. William H. Songer, Deputy County Counsel argued for respondent. Cause submitted.

D044293 People v. Molina et al.

Cause called on merits. Laura G. Schaefer, Esq. argued for appellant, Molina. Dacia Burz, Esq. was present in oral argument for appellant, Castillo. Janelle Boustany, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:27 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 11, 2005 (Continued)

D045345 In re Michael G., a Juvenile

Cause called on merits. Maryann Marisa Milcetic, Esq. argued for appellant. Christa Baxter, Deputy County Counsel argued for respondent. Alice C. Shotton, Esq. argued for the minor. Ms. Milcetic replied. Cause submitted.

D043687 Markham v. Warsoff

D043633 Warsoff v. Markham (both cases argued together)

Cause called on merits. Norman Pine, Esq. argued for appellant. Edward I. Silverman, Esq. argued for respondent. Mr. Pine replied. Cause submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. Moore

D044294 Woodridge Escondido Property Owners Association v. Nielsen

Cause called on merits. Joseph J. Rego, Esq. argued for appellant. Lisa Morgosh, Esq. argued for respondent. Mr. Rego replied. Cause submitted.

D044861 McCullough a Minor., etc. v. Ralph Wallace Johns Trust et al.

Cause called on merits. Darrell Nathan Erwin, Esq. argued for appellant. Jon B. Miller, Esq. argued for respondent. Mr. Erwin replied. Cause submitted.

D044907 Rider et al. v. City of San Diego

Cause called on merits. James Bruce Henderson, Esq. argued for appellant. Claudia Silva, Deputy City Attorney argued for respondent. Mr. Henderson replied. Cause submitted.

Court recessed at 2:38 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 11, 2005 (Continued)

D044716 People v. Westgarth

Cause called on merits. Robert L. Grimes, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Grimes replied. Cause to be submitted at a later date.

Court recessed at 3:13 p.m. until Thursday, May 12, 2005 at 9 a.m.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D045612 Bryant v. Superior Court/People-RPI

Matter called on merits. Donald L. Levine, Esq. argued for petitioner. Carmela Simoncini, Esq. argued for amicus curiae. John Spangler, Esq. argued for real party in interest. Mr. Levine replied. Matter submitted.

Court recessed at 9:28 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

D043104 Escondido Union School District v. Casa Suenos De Oro, Inc.

Cause called on merits. Bruce W. Beach, Esq. argued for appellant/cross-respondent. Douglas L. Mahaffey, Esq. argued for respondent/cross-appellant. Mr. Beach replied. Mr. Mahaffey replied. Cause submitted.

Court adjourned at 10 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 12, 2005

D046225 In re Bryant on Habeas Corpus

The petition is denied.

D044315 People v. Hasley

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McDonald, J.

D040183 Rohner et al. v Augusta

The court has been advised that the bankruptcy court has entered a discharge order in the bankruptcy case of defendant/respondent Mark Augusta. This court's stay order of October 16, 2002 is accordingly vacated.

The Rule 17 notice issued on September 16, 2002 is vacated. Appellant's opening brief is due within 30 days of the date of this order.

D044282 People v. Mateljan

(consolidated with D044283 People v. Short, Jr.; D044516 People v. Davari; D044517 People v. Yui; D044519 People v. Fanale; D044520 People v. Paulick)

The orders are affirmed. CERTIFIED FOR PUBLICATION. Benke, Acting P.J.;
We Concur: Huffman, J., Haller, J.

D044715 People v. Freund

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D045052 People v. Muncy

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., McDonald, J.

**D046346 San Diego Convention Center Corporation, Inc. v. Superior Court of San Diego
County/Riley**

The petition is denied.

D046211 Mudgett v. Superior Court of San Diego County/Mudgett

The petition is denied.

D046381 In re Conservatorship of Nalven

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 13, 2005

D045296 People v. Tapia

The judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., Irion, J.

D045159 People v. Meals

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

D045308 People v. Frausto

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., McIntyre, J.

D044653 Walker v. Levin et al.

Judgment affirmed. Haller, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D045131 In re Kenneth B., a Juvenile

The orders are affirmed. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D045734 In re Baltazar

The petition for writ of habeas corpus is denied.

D045734 People v. Baltazar

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Huffman, J.

D043940 People v. Lo

The judgment is reversed. O'Rourke, J.; We Concur: Nares, Acting P.J., McDonald, J.

D042016 People v. Munoz

The order committing appellant as a sexually violent predator is reversed. CERTIFIED FOR PUBLICATION. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

D046395 People v. Lewis

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

D046379 In re Consiglio on Habeas Corpus

The petition is denied.

D046196 Giovanni, Inc. v. Superior Court of San Diego County/Hwa

The petition is denied.

D046364 Smith v. Superior Court of San Diego County/People

The petition is denied.

D046227 In re Andrews on Habeas Corpus

The petition is denied.